

19 CS DJ ADJ 284/18 SANJEEV BINDRA Vs. NAVNEET BHATIA AND ORS.

07.11.2025

Present: Sh. Saurabh Balwani, Sh. Rohan Batra, Sh. Dhurv Sethi and Ms. Raj Ssarit Khare, Ld. Counsels for plaintiff.
Sh. Shivam Jasra, Ld. counsel for defendant no.1 through VC.
Defendant no. 2 is already proceeded *ex parte* vide order dated 08.04.2025.
Sh. Ajay Malik, Ld. Counsel for defendant no.2.

Arguments heard on application U/o XLVII Rule 1 CPC read with Section 114 & 151 CPC filed by defendant no.2.

Put up for orders at 4.00 p.m.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 07.11.2025 (sr)

At 04:00 PM

Present: None.

1. Vide this order, this court shall decide an application u/o XLVII Rule 1 r/w Sec. 114 and 151 CPC filed on behalf of the defendant no. 2 to review the order dt. 11.07.2025 whereby application u/o IX Rule 7 CPC was dismissed.

2. Perusal of the record reveals that, vide order dt. 08.04.2025 defendant no. 2 was proceeded ex-parte and thereafter defendant no. 2 moved an application u/o IX Rule 7 CPC for setting aside the above ex-parte order which was dismissed vide order dated 11.07.2025.

3. It is submitted on behalf of applicant that, the applicant has now discovered and wishes to place record the crucial electronic evidence in the form of a WhatsApp chat between the Applicant and a counsel, dated 03.05.2025, which explicitly indicates that the Applicant had reached the Court premises on that incorrect date, believing it to be the actual date of hearing and a true copy of the said WhatsApp chat along with a certificate under Section 65B of the Indian Evidence Act, 1872, is annexed with the application as Annexure-A. It is further submitted that, this WhatsApp chat constitutes 'new and important matter/evidence' within the meaning of Order XLVII Rule 1 CPC as its critical evidentiary value in directly rebutting the specific finding of this Hon'ble Court i.e. lack of material for the wrong date plea. It is further submitted that, the non-production of this specific piece of evidence at the time of the previous hearing was not due to any deliberate negligence, but rather an oversight regarding its immense significance in providing irrefutable contemporaneous proof of the Applicant's *bona fide* belief and physical act of attendance.

4. It is further submitted that, this Hon'ble Court, in its order, referred to the maxim "*Vigilantibus non dormientibus jura subveniunt*" and stated that defendant No. 2 'can't be stated to unaware of legal proceedings' and that the "wrong recording of date of hearing" cannot be taken as an "excuse under law." It is further submitted that, the above mentioned WhatsApp chat directly and unequivocally demonstrates the Applicant's vigilance and *bona fide* intention to pursue the proceedings. It provides concrete proof that the Applicant, far from being negligent or unaware, actively engaged in attempting to attend the hearing, albeit on a date mistakenly noted. This evidence proves that the non-appearance of applicant on 08.04.2025 was a genuine error and not a deliberate act of avoidance or negligence.

5. It is also submitted that, the Applicant has a strong and meritorious defence to the suit dismissing the Order IX Rule 7 application based on a factual finding directly contradicted by the newly presented evidence would lead to irreparable loss and injury to the Applicant and would amount to a grave miscarriage of justice. It is lastly submitted that, the purpose of procedural law, particularly Order IX Rule 7 and Order XLVII Rule 1 CPC, is to advance the cause of justice and not to punish a litigant for a *bona fide* error hence, in the light of the new evidence, it is imperative for this Hon'ble Court to re-examine its previous order to prevent a grave injustice and to ensure that the Applicant is afforded a fair opportunity to defend the suit on its merits.

6. *Per contra*, Ld. Counsel for plaintiff/non applicant vehemently opposed the present application. It is submitted that, review application is without any merit and may be dismissed with heavy cost. It is submitted that, Whatapp chat as relied upon by the non-applicant seems to be of some 'Delhi Law' and addressed to some Siddharth Ji' while no Vakalatnama with the name 'Siddharth Ji' is available on record. It is further submitted that, photo of some broken phone and some invoices (which has no relevancy to the present proceedings) have been filed. It is further submitted that, the order of this court dt. 11.07.2025 dismissing the applicant's application u/o IX Rule 7 CPC was rightly passed and has no infirmity, hence, present application for review of said order is nothing but abuse of process of law filed with a purpose of delaying the proceedings as much as possible and same may be dismissed with heavy cost.

ANALYSIS AND FINDING

7. It is well settled law that, scope of review of any order is narrow and unless and until there is patent error in the order which is visible on the face of it, the review cannot be exercised. The review cannot be treated like an appeal in disguise. Any person considering himself aggrieved by an order can file review petition in following events:

- a. On the discovery of new and important matter for evidence which, after the exercise of due diligence, was not within applicant's knowledge or could not be produced by him at the time when order was made; or
- b. On account of some mistake or error apparent on the face of the record; or
- c. For any other sufficient reason, desire to obtain a review of the order passed against him.

8. In *Col. Avatar Singh Sekhon v. Union of India and Ors.*¹, Hon'ble Supreme Court of India observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante and Anr. v. Sheikh Habib MANU/SC/0064/1975 : (1975) 1 SCC 674 this Court observed:

1 1980 Supp SCC 562

A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.'

9. In *The State of West Bengal and others v. Kamal Sengupta and others*² Hon'ble Supreme Court of India had laid down the conditions required for seeking review of the judgment on the ground of "discovery of new matter or evidence" as follows:

'14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier...'

10. This court carefully gone through the entire material placed on record as well as the proceedings till date and is of the opinion that, ingredient of review does not meet out. In the present matter, applicant has himself stated in his application that the non-production of the alleged piece of evidence/Whatsapp chat was an oversight. For clarification, relevant para no. iv of grounds for review is reproduced here-in-below:

"iv. That the non-production of this specific piece of evidence at the time of the previous hearing was not due to any deliberate

negligence, but rather an oversight regarding its immense significance in providing irrefutable contemporaneous proof of the Applicant's bona fide belief and physical act of attendance.”

11. Thus, considering overall facts and circumstance of present case, this court doesn't find any infirmity in order dt. 11.07.2025. Hence, present Review Petition stands dismissed.

12. Put up for further proceedings on date already fixed i.e. 18.02.2025.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 07.11.2025 (sr)